Connecticut Department of
ENERGY &
ENVIRONMENTAL
PROTECTION

STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION

Public Hearing – March 16, 2012
Environment Committee

Testimony Submitted by Commissioner Daniel Esty
Presented By Deputy Commissioner Macky McCleary

Raised Senate Bill No. 375 – AN ACT CONCERNING REIMBURSEMENT UNDER THE UNDERGROUND STORAGE TANK PETEROLEUM CLEAN-UP PROGRAM

Thank you for the opportunity to present testimony regarding Raised Senate Bill No. 375 – AN ACT CONCERNING REIMBURSEMENT UNDER THE UNDERGROUND STORAGE TANK PETEROLEUM CLEAN-UP PROGRAM. The Department of Energy and Environmental Protection (DEEP) welcomes the opportunity to offer the following testimony.

The Department thanks the Environmental Committee for raising Senate Bill No. 375. Unfortunately, this bill is necessary because the state is simply cannot afford to continue to pay for the cost of compliance with the financial responsibility requirements for all owners and operators of underground storage tanks systems. For more than twenty years the state has paid for such costs through the Underground Storage Tank Petroleum Clean-Up Program ("the Program") despite that fact that many of those for whom such costs are paid are enormous multi-national corporations, who are more than able to shoulder any such burden.

To address this situation and provide a plan to responsibly honor applications, DEEP presented the Environment Committee with a bill that contained two key components: One, a plan for making payment to applicants that have already submitted applications to the program but have not yet been paid or that may be submitted in the future, and two, a deadline for transitioning owners and operators of underground storage tank systems from using the state fund to insurance or other mechanisms to demonstrate compliance with their financial responsibility requirements.

A key to both of these components is the use of an "asset" test, whereby applicants would be broken down into four categories:

(A) Municipalities and innocent affected parties (those whose do not own or operate a service station, but live near or adjacent to or near a station and whose property has been affected by a release from an underground storage tank);

(B) Small Station Owners (those with interests in 4 stations or less);
(C) Mid-Size Stations Owners (those with interests in more than 4 but less than 100 stations); and
(D) Large Station Owners (those with interests in greater than 100 stations)

These four categories would be used for a number of purposes. First, all future funding for the Program, whatever form it takes, would be allocated to each category. Subject to any adjustments by the legislature, DEEP proposed that this funding be equal to each category.

Second, the transition from reliance on the state fund to other financial assurance mechanisms would differ for each category. For municipalities, innocent affected parties and small station owners, the deadline for transitioning off of the state fund as a financial assurance mechanism would be October 1, 2013. For releases occurring before October 1, 2013 that are reported to DEEP, applicants in these categories could continue to submit applications until October 1, 2014. After October 1, 2014, no applications of any kind (either initial or supplemental applications) could be submitted from applicants in these categories. For mid-sized station owners the deadline for transitioning off of the state fund as a financial assurance mechanism would be October 1, 2012. For releases occurring before October 1, 2012 that are reported to DEEP, applicants in this category could continue to submit applications until October 1, 2013. After October 1, 2013, no applications of any kind could be submitted from applicants in this category. For large station owners the deadline for transitioning off of the state fund as a financial assurance mechanism would be October 1, 2012. After October 1, 2012, no applications of any kind could be submitted from applicants in this category.

This framework will allow municipalities and small station owners the most time to transition from reliance on the state fund to other financial assurance mechanisms. It will also provide those in these categories with additional time to complete any needed investigation or remediation on their sites. Those in the other categories need less time and so DEEP's proposal correspondingly provides less time.

Third, DEEP's proposal includes a framework for prioritizing payment of applications that makes the most of the limited resources the state can continue to provide. Municipalities, innocent affected parties, and small station owners – once approved for payment – would be paid in full with applications prioritized based upon the order in which they were approved, with the oldest approved applications paid first. Based upon the applications that have been submitted, the entities in these categories could all be paid in two to three years. Mid-sized and large station owners would need to file a payment election. Through this payment election, applicants in these categories would indicate whether they are willing to accept a specified amount, beginning at twenty cents on dollar, or less, on the amount approved for payment. No payments could be made in any year in excess of this specified amount. Those applicants electing to accept the largest reduction in payment would be prioritized first. No applicant is required to accept a discounted amount; an applicant can choose to wait until the specified amount of payment reaches a level the applicant finds acceptable. The specified discounted amount would begin at twenty cent on the dollar and increase five cents each year until it reaches one dollar.

Finally, with respect to the administration of the Program, DEEP proposed that the Commissioner, rather than Underground Storage Tank Petroleum Clean-Up Review Board ("Review Board") approve applications. DEEP staff currently processes applications and for virtually all applications, DEEP's staff and the applicant are in agreement. Currently, even with such agreement, an application must still be approved by the Review Board, which only meets once every three months. Allowing the Commissioner to approve claims would streamline the application process and allow applications to be processed more expeditiously by eliminating any waiting time between Review Board meetings.

This was the basic framework that DEEP submitted to the Environment Committee. Unfortunately, perhaps given the complexity of the proposed changes, Raised Senate Bill No. 375 either deviates or could be interpreted as deviating from this framework in a number of respects. The definition of "innocent affected party" is not limited to those intended by DEEP. In Raised Senate Bill No. 375, the payment election process is voluntary, not mandatory, and does not make clear that in each year payment above a certain amount cannot be made. The dates when the state fund will no longer serve as a financial assurance mechanism or when applications to the fund can no longer be submitted have not been specified. Having the Commissioner rather than the Review Board approve applications resulted in a number of new revisions that require further evaluation. DEEP is still reviewing the proposal and will provide the Committee with substitute language that resolves these issues and better reflects the Department's intent without any ambiguities. DEEP looks forward to working with the Committee and the affected stakeholders to address these issues to ensure that any final bill clearly and unambiguously accomplishes the twin goals noted above.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact DEEP's legislative liaison, Robert LaFrance at 424-3401 or Robert.LaFrance@ct.gov.